FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.483 OF 2005
IN
FIRST APPEAL NO.254 OF 2005

Office notes, office	:	
Memoranda of Coram,	:	
appearances, Court's	:	Court's or Judge's Orders
orders or directions	:	
& Registrar's orders.	:	.

Mr. P.R. Naidu for the applicant.

Mr. M.H.A. Sayyid for respondent 2.

CORAM: SMT. RANJANA DESAI, J.

DATED: 8TH APRIL, 2005.

P.C.:-

The first appeal has been admitted. In this civil application, the original defendant has sought stay of the impugned judgment and order and vacation of the conditional order passed by the trial court whereby the defendant was made to deposit Rs.5,000/-. So far as the order directing deposit of Rs.5,000/- is concerned, in my opinion, it is clearly illegal. The learned judge has made a reference to Order XLV(2). Order XLV provides for appeals to the Supreme Court. The learned judge,

therefore, could not have passed any order under Order XLV and, in any event, he could not have asked the defendant to deposit Rs.5,000/- as a condition for stay. Hence, the trial court is directed to refund the amount of Rs.5,000/- to the defendant on his making an application in that behalf.

So far as the prayer for stay is concerned, the first appeal is admitted. Therefore, the impugned order and decree will have to be stayed. However, the defendant who is conducting the business in the suit premises will have to file undertaking in this court to the effect that in the event of the plaintiff succeeding in this appeal, he shall hand over vacant, peaceful and unencumbered possession of the suit premises to the plaintiff. The learned counsel for the plaintiff made a serious grievance that the defendant is only paying Rs.130/- towards rent and that the defendant may be asked to pay a little more. No such order can be passed in this civil application. This court has however not expressed any opinion in that aspect and the plaintiff will

be at liberty to adopt appropriate proceedings if he is so advised.

Hence, pending the hearing and final disposal of the appeal, the impugned order and decree shall is stayed on the defendant who is conducting the business in the suit premises filing undertaking to the effect that in the event of the plaintiff succeeding in this appeal, he shall hand over vacant, peaceful and unencumbered possession of the suit premises to the plaintiff. Undertaking to be filed within four weeks.

Civil application is disposed of in the aforestated terms.

All contentions of the parties are kept open.

All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)